

DECLARATION OF DANA CARAWAY

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

MAXWELL KADEL, *et al.*,

Plaintiffs,

v.

DALE FOLWELL, in his official capacity as
State Treasurer of North Carolina, *et al.*,

Defendants.

No. 1:19-cv-00272-LCB-LPA

**DECLARATION OF DANA
CARAWAY**

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am a plaintiff in the above-captioned action. I have actual knowledge of the matters stated in this declaration.
2. I am a native of Morganton, North Carolina. I have worked for the State of North Carolina as a corrections officer for twenty-seven years.
3. I am transgender, and I am being denied equal access to healthcare coverage under the North Carolina State Health Plan for Teachers and State Employees (“NCSHP”) because it contains an exclusion for coverage of gender-confirming care.
4. I have brought suit to end the State’s discrimination and to seek compensation for the harm I have suffered. I submit this declaration in support of summary judgment.

Career

5. I have worked as a corrections officer since 1994. For that whole time, my employer has been the Department of Public Safety, although it was still called the Department of Corrections when I started. I was hired at the rank of correction officer, and I was promoted in 2006 to the rank of Sergeant.

6. I currently hold the position of supervisor in the Division of Adult Correction and Juvenile Justice at Foothills Correctional Institution in Morganton. I supervise up to fifteen corrections officers to ensure that they are following laws and policies regarding inmate custody, housing, programming, medical care, and discipline.

7. For the past two years, I have also worked part-time as a salesperson at Torrid, a women's clothing boutique in Hickory. This part-time job does not afford me access to health insurance.

My Gender Transition

8. I am a transgender woman. Although I was assigned the sex of male at birth based on external physical sex characteristics, I am female.

9. I have known I am female since even before I knew how to describe that feeling. By the time I was around four or five, I was already wearing my mother's and my girl friends' clothes, but I had to stop when I got caught and was punished multiple times for wearing clothes not consistent my sex assigned at birth. But I would still dream. As far back as I can remember dreaming, I would dream about having a female body, and about not being punished for wearing the "wrong" clothes.

10. As I grew older, my desperation deepened, knowing that I was born into the wrong body, not the body I should have, and that society would punish me for this feeling

this way, or for doing anything about it. So I mostly kept my feelings to myself. I would occasionally dress as a woman alone in my home. But I was ashamed and scared, and I for a long time I didn't even talk to my family about how I felt.

11. Knowing that I was in the wrong body caused me great distress and mental anguish. Not being able to do anything about it just made it worse. I was so uncomfortable with who I was physically that I became a recluse and wouldn't let other people in to my life. I gained a lot of weight, I had relationship problems and sleeplessness. I didn't see anyone outside my home other than wife and kids. Everything was centered around having to hide the fact that I was female and born in the wrong body.

12. Around 2014 I couldn't take being along with these feelings anymore. I started to talk about them with my wife, and I started to dress as a woman outside my home occasionally.

13. In 2017 I started reaching out over the internet to members of the LGBTQ community for support. We talked about gender dysphoria, and about organizations that supported LGBTQ people in Western North Carolina, and about seeking healthcare.

14. By mid-2018, I had decided to stop living as the wrong gender and in the wrong body, relieve my distress, and be more in line with my true self. I had decided I would begin the process of transition. I found a therapist who could help me figure out what was going on, and a medical practice that would be provide me proper treatment if it was deemed necessary. I wanted to be sure my health insurance would cover any medical care I needed. The 2018 NCSHP plan booklet hadn't come out yet, so I looked in

the 2017 plan booklet, and I was relieved to see that transgender healthcare was not excluded.

15. I also came out at work in 2018. My colleagues have been abusive. When I had to take a brief medical leave in early 2019 due to a kidney issue, I had a breakdown and was unable to return to work due to the situational anxiety caused by my coworkers' hostility—and because, as it turned out, NCSHP refused to cover the healthcare I needed. I was forced to stay out of work for several additional weeks until my condition stabilized. I have filed an EEOC charge, separately from this lawsuit, against the Department of Public Safety about my hostile work environment.

NCSHP

16. I am required by the Department of Public Safety to have health insurance and have been a member of NCSHP since I joined the Department of Corrections.

17. I am enrolled in NCSHP's 80/20 plan. I pay a \$50 per month premium for it, which is deducted from my paychecks. As far as I know, this is the same as what other State employees pay. For example, my spouse, who is also a State employee, pays the same.

18. The NCSHP covers most of my healthcare. However, on January 1, 2018, the exclusion for transgender care was reinstated. This means that surgery for things like my kidney condition has been covered, but the gender-confirming surgeries I need are not.

Being Denied Healthcare Coverage

19. My therapist diagnosed me with gender dysphoria in mid-2018. I began

regular mental health therapy, and I still go regularly.

20. Also in mid-2018, I began hormone replacement therapy. At my first visit to Planned Parenthood, I discussed hormone replacement therapy options, but they did not prescribe hormone replacement therapy for me right away. They eased me into it gradually during subsequent visits over several months, adding and adjusting medications as appropriate to treat my gender dysphoria. I still need to take these medications now, in order to maintain alignment between my body and my gender, and also because my body no longer produces sex hormones, and so I still go to Planned Parenthood regularly for them to adjust my medications.

21. I had problems getting health insurance coverage for this care. Around October of 2018, I went back to the NCSHP plan booklet to confirm that my healthcare should be covered. But this time, I couldn't find anything comparable to what I had seen in the information from the year before. Instead of saying transgender health services were covered, the 2018 plan booklet said they were excluded.

22. So I googled things, and I saw the news that the exclusion had been reinstated. This was immensely upsetting, emotionally, physically, and mentally. I felt hated and treated as a second-class person, not as an equal, by the State.

23. I also discussed the possibility of gender confirming surgery with my therapist, and later also with a psychologist. My therapist recommended gender-confirming surgery because it would help alleviate gender dysphoria. So did my psychologist, who also sent a letter to my surgeon recommending surgery. I selected a surgeon for top and bottom surgery, met with her, discussed the risks and benefits of the

surgery, and set a surgery date for November of 2019.

24. However, by this time, I knew that the NCSHP had an exclusion in it, and I couldn't afford to pay for the surgery then. So I had to postpone it. This was devastating. But I wasn't going to let it stop me. I started withdrawing funds out of my retirement account. I began making payments to my surgeon. By the summer of 2020, I had fully paid for the surgery. At that point, my surgeon submitted another preauthorization request, even though we both expected it would be denied, because we both hoped I might recoup at least something. But the preauthorization request was denied completely. The denial letter from NCSHP states that only reason for the denial is the exclusion. A true and correct copy of the letter, with redactions applied, is attached as Exhibit A. On August 5, 2020, I was finally able to obtain top and bottom surgery.

25. Including the surgeon's fee, the hospital fee, the anesthesiologist fee, and the hair removal I was required to have for the surgery, has cost me over \$27,000. I even had to pay for an Airbnb to stay near the hospital, because I couldn't afford the cost of staying in-hospital during my recovery.

26. I also have an appointment for vocal feminization surgery, on November 18, 2021. My surgeon for that procedure has recommended the surgery because it would alleviate my dysphoria with my voice. He has also recommended therapy to help change my voice, which I started doing earlier this year. Because NCSHP excludes coverage of vocal therapy or surgery for treatment of gender dysphoria, I have had to pay about \$11,000 out of pocket for these items.

27. I would like to make an appointment for facial feminization surgery as well,

because it would alleviate my gender dysphoria by taking away or improve the masculine portions of my appearance and bring my face more in line with my gender identity.

However, I cannot make the appointment because I have not yet saved up enough money to make an appointment for that. I believe this would be covered if BCBSNC eliminated its exclusion, because it is covered under Blue Cross Blue Shield of North Carolina's Corporate Medical Policy, and so if the exclusion were removed I could stop waiting and obtain the care I need.

28. I have even had trouble getting coverage for my hormone replacement therapy under the NCSHP. The NCSHP has sometimes covered my hormone medications and visits to Planned Parenthood, and sometimes it has not. I don't understand why. For example, when I first started my visits with Planned Parenthood, NCSHP did not cover them. After my first four visits, it began covering them, but sometimes in full and sometimes only partially. Also, the NCSHP has sometimes paid for my hormones, and sometimes hasn't. Currently, it is refusing to cover the estrogen pellets that I have to have inserted a few times a year. This is confusing me to me because I have male co-workers whose hormone pellets are covered under NCSHP.

29. The transgender care that I have been able to obtain thus far, mostly by paying for it myself, has helped, up to a point.

30. But I still feel a lot of distress, anxiety, stress and sleeplessness due to having to stay in a body that still feels in important ways like it isn't mine. I still need to take medications to manage anxiety and sleeplessness. I expect I will feel this way until my medical care is completed. My providers still notice this as well, and my providers

agree that feminizing my face and voice would be an improvement for me socially, mentally, physically. The reason I stayed in this body for longer than I needed to, and the reason I still haven't completed my surgical care, is that NCSHP has forced me to by denying coverage for my medically necessary care.

31. Also, without facial feminization surgery, and without feminizing my voice, I continue to suffer discrimination based on my appearance. People see me as transgender. I've been denied service in restaurants. I feel more vulnerable to hate crimes. On June 20, 2021, I was assaulted on duty at work by an inmate, who called me a transgender-related derogatory name and struck me.

32. I also still feel a lot of heartache and hurt because of the exclusion. It makes me feel like I'm being treated like a nobody. This contributes to my sleeplessness, anxiety, and distress.

33. I do believe that with the completion of the rest of my gender confirming surgeries, along with the ones that I have already undertaken, that I will be a complete person. I do believe that if the exclusion is removed that I will feel like a person who deserves equality and respect from co-workers and the community, and not the second-class citizen I have been treated as.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: November 15, 2021


Dana Caraway

SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 DAY OF November, 2021





CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically with the Clerk of Court using the CM/ECF system which will send notification of such filing to all registered users.

Dated: November 30, 2021

/s/ Amy E. Richardson
Amy E. Richardson
N.C. State Bar No. 28768
HARRIS, WILTSHIRE & GRANNIS LLP
1033 Wade Avenue, Suite 100
Raleigh, NC 27605-1155
Telephone: 919-429-7386
Facsimile: 202-730-1301
arichardson@hwglaw.com

Counsel for Plaintiffs

Exhibit A



BlueCross BlueShield of North Carolina
Healthcare Management and Operations
P.O. Box 2291
Durham, NC 27702

Telephone Number: 800-672-7897
Fax Number: 800-672-6587
Website: WWW.BCBSNC.COM

[REDACTED] CARAWAY
[REDACTED]
MORGANTON NC [REDACTED]

Date of Notice: June 19, 2020

This document contains important information that you should retain for your records.

This document serves as notice of an adverse benefit determination. We have declined to provide benefits, in whole or in part, for the requested treatment or service described below. If you think this determination was made in error, you have the right to appeal (see the enclosures to this letter for information about your appeal rights.)

Case Details:

Member/Patient Name: [REDACTED] CARAWAY
ID Number: [REDACTED]

Provider: [REDACTED], MD

Facility: [REDACTED]

Service: Surgical Stay

Date(s) of Service: 8/5/2020 - 8/6/2020

Service: INTERSEX SURGERY; MALE TO FEMALE

Date(s) of Service: 8/5/2020 - 8/6/2020

Service: MAMMAPLASTY, AUGMENTATION; WITH PROSTHETIC
IMPLANT

Date(s) of Service: 8/5/2020 - 8/6/2020

Reference #: 114690052

Reason for Denial: The requested service is not a covered benefit per your benefit booklet or plan documents.

Explanation of Basis for Determination:

**"The following is not a covered benefit " see page 53 of 2020 SHP BB:
Treatment or studies leading to or in connection with sex changes or
modifications and related care.**

Sincerely,

Healthcare Management and Operations

cc: [REDACTED], MD

cc: [REDACTED]

Important Information about Your Appeal Rights

This notice is an "adverse benefit determination." This means that a request for a procedure or services made by you or your doctor has not been approved for coverage. Please read this information, and call our customer service department if you have any questions about this notice.

What if I don't agree with this decision? You may ask for an appeal. You must ask for an appeal within 180 days of the date of this letter. If you need help in filing an appeal, please call 1-888-234-2416.

What is an appeal? An appeal is another review of your case. A staff member who works in a separate department from the staff members who denied your first request will look at your appeal. The appeals staff members have not reviewed your case or information before. These reviews can take up to 30 calendar days. You will get a letter of the decision of your appeal by the end of the 30-day timeframe. The decision may be to agree with the first adverse benefit determination, or to disagree with the first adverse benefit determination and allow your request to be covered. If the decision is to agree with the first adverse benefit determination, you may have more appeal rights. The appeal decision letter will tell you about these rights.

Who can ask for an appeal? Only you have the right to ask for an appeal. You can also give permission for someone else to ask for the appeal for you. BCBSNC must have a signed release form from you on record so that person can act for you. You can get the release form by calling Customer Service or on the internet at www.shpnc.org and searching for "important forms."

How do I file an appeal? Appeals must be in writing. You can send a letter for an appeal request or fill out a member appeal form. You can get these forms by calling Customer Service or on the internet at www.shpnc.org and searching for "important forms." You have the right to give us any information or materials that support your request. You should fax or mail the letter, appeal form, and any other clinical information to:

Blue Cross and Blue Shield of North Carolina
Appeals Department Level I
PO Box 30055
Durham, NC 27702
Fax: 1-919-765-2322

What happens next for an appeal? When the BCBSNC Appeals Department has received your appeal request, they will mail you a letter within three business days. This letter will give your next steps for the appeals process.

How do I learn more about this decision? You may ask for information about your case at no cost to you. This could include:

- copies of all records about your case;
- copies of the rules, medical policies, or any other clinical guidelines used to make this decision. The specific rule, policy, or guideline used for your decision is included on the first page under "Explanation of Basis of Determination."

You can ask for this information by writing to us at the address below. Please include your medical policy ID number on your BCBSNC ID card with your request.

Blue Cross and Blue Shield of North Carolina
Care Management & Operations
PO Box 2291
Durham, NC 27702

What if I need more help? The Health Insurance Smart NC Program through the NCDOL is able to help you with questions about health insurance. Health Insurance Smart NC also gives consumer counseling on utilization review and appeals issues. You may contact Health Insurance Smart NC at:

By Mail:

North Carolina Department of Insurance
Health Insurance Smart NC
1201 Mail Service Center
Raleigh, NC 27699-1201
Toll Free Telephone: (855) 408-1212
<http://www.ncdoi.com/smart>

In Person:

For the physical address for Health Insurance Smart NC, please visit the web-page:

<http://www.ncdoi.com/smart>

Toll Free Telephone: (855) 408-1212

Non-Discrimination and Accessibility Notice

Discrimination is Against the Law

- Blue Cross and Blue Shield of North Carolina ("BCBSNC") complies with applicable Federal civil rights laws and does not discriminate on the basis of race, color, national origin, age, disability, or sex.
- BCBSNC does not exclude people or treat them differently because of race, color, national origin, age, disability, or sex.

BCBSNC:

- Provides free aids and services to people with disabilities to communicate effectively with us, such as:
 - Qualified interpreters
 - Written information in other formats (large print, audio, accessible electronic formats, other formats)
- Provides free language services to people whose primary language is not English, such as:
 - Qualified interpreters
 - Information written in other languages
- If you need these services, contact Customer Service 1-888-234-2416, TTY and TDD, call 1-800-442-7028.
- If you believe that BCBSNC has failed to provide these services or discriminated in another way on the basis of race, color, national origin, age, disability, or sex, you can file a grievance with:
 - BCBSNC, PO Box 2291, Durham, NC 27702, Attention: Civil Rights Coordinator- Privacy, Ethics & Corporate Policy Office, Telephone 919-765-1663, Fax 919-287-5613, TTY 1-888-291-1783 civilrightscoordinator@bcbsnc.com
- You can file a grievance in person or by mail, fax, or email. If you need help filing a grievance, Civil Rights Coordinator - Privacy, Ethics & Corporate Policy Office is available to help you.
- You can also file a civil rights complaint with the U.S. Department of Health and Human Services, Office for Civil Rights, electronically through the Office for Civil Rights Complaint Portal, available at <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>, or by mail or phone at: U.S. Department of Health and Human Services 200 Independence Avenue, SW Room 509F, HHH Building Washington, D.C. 20201 1-800-368-1019, 800-537-7697 (TDD). Complaint forms are available at <http://www.hhs.gov/ocr/office/file/index.html>.
- This Notice and/or attachments may have important information about your application or coverage through BCBSNC. Look for key dates. You may need to take action by certain deadlines to keep your health coverage or help with costs. You have the right to get this information and help in your language at no cost. Call Customer Service 1-888-234-2416.

ATTENTION: If you speak another language, language assistance services, free of charge, are available to you. Call 1-888-234-2416 (TTY: 1-800-442-7028).

ATENCIÓN: Si habla español, tiene a su disposición servicios gratuitos de asistencia lingüística. Llame al 1-888-234-2416 (TTY: 1-800-442-7028).

注意: 如果您講廣東話或普通話，您可以免費獲得語言援助服務。請致電 1-888-234-2416 (TTY: 1-800-442-7028)。

CHÚ Ý: Nếu bạn nói Tiếng Việt, có các dịch vụ hỗ trợ ngôn ngữ miễn phí dành cho bạn. Gọi số 1-888-234-2416 (TTY: 1-800-442-7028).

주의: 한국어를 사용하시는 경우, 언어 지원 서비스를 무료로 이용하실 수 있습니다. 1-888-234-2416 (TTY: 1-800-442-7028)번으로 전화해 주십시오.

ATTENTION : Si vous parlez français, des services d'aide linguistique vous sont proposés gratuitement. Appelez le 1-888-234-2416 (ATS : 1-800-442-7028).

ملحوظة: إذا كنت تتحدث اللغة العربية، فإن خدمات المساعدة اللغوية تتوافر لك بالمجان. اتصل برقم 1-888-234-2416. المبرقة الكاتبة: 1-800-442-7028.

LUS CEEV: Yog tias koj hais lus Hmoob, cov kev pab txog lus, muaj kev pab dawb rau koj. Hu rau 1-888-234-2416 (TTY: 1-800-442-7028).

ВНИМАНИЕ: Если вы говорите на русском языке, то вам доступны бесплатные услуги перевода. Звоните 1-888-234-2416 (телетайп: 1-800-442-7028).

PAUNAWA: Kung nagsasalita ka ng Tagalog, maaari kang gumamit ng mga serbisyo ng tulong sa wika nang walang bayad. Tumawag sa 1-888-234-2416 (TTY: 1-800-442-7028).

સુચના: જો તમે ગુજરાતી બોલતા હો, તો નિઃસુલ્ક ભાષા સહાય સેવાઓ તમારા માટે ઉપલબ્ધ છે. ફોન કરો 1-888-234-2416 (TTY: 1-800-442-7028).

ចំណាំ: ប្រសិនបើលោកអ្នកនិយាយជាភាសាខ្មែរ លោកអ្នកជំនួយផ្នែកភាសាមានផ្តល់ជូនសម្រាប់លោកអ្នកដោយមិនគិតថ្លៃ។
សូមទំនាក់ទំនងតាមរយៈលេខ: 1-888-234-2416 (TTY: 1-800-442-7028)។

ACHTUNG: Wenn Sie Deutsch sprechen, stehen Ihnen kostenlos sprachliche Hilfsdienstleistungen zur Verfügung. Rufnummer: 1-888-234-2416 (TTY: 1-800-442-7028).

ध्यान दें: यदि आप हिन्दी बोलते हैं तो आपके लिए मुफ्त में भाषा सहायता सेवाएं उपलब्ध हैं। 1-888-234-2416 (TTY: 1-800-442-7028) पर कॉल करें।

ໂປດຊາບ: ຖ້າວ່າ ທ່ານເວົ້າພາສາ ລາວ, ການບໍລິການຊ່ວຍເຫຼືອດ້ານພາສາ, ໂດຍບໍ່ເຮັດຄ່າ, ຄຸ້ມມືມືພ້ອມໃຫ້ທ່ານ. ໂທ 1-888-234-2416 (TTY: 1-800-442-7028).

注意事項: 日本語を話される場合、無料の言語支援をご利用いただけます。1-888-234-2416 (TTY: 1-800-442-7028) まで、お電話にてご連絡ください。